



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2011 REGULAR SESSION

HOUSE BILL NO. 121

AS ENACTED

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ELAINE N. WALKER
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY R. Allen

AN ACT relating to crimes and punishments and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO
READ AS FOLLOWS:

(1) A person is guilty of trafficking in naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, or 4-methylmethcathinone when he or she knowingly and unlawfully traffics in naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, or 4-methylmethcathinone.

(2) Trafficking in naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, or 4-methylmethcathinone is a Class A misdemeanor.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO
READ AS FOLLOWS:

(1) A person is guilty of possession of naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, or 4-methylmethcathinone when he or she knowingly and unlawfully possesses naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, or 4-methylmethcathinone.

(2) Possession of naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, or 4-methylmethcathinone is a Class B misdemeanor, except that, KRS Chapter 532 to the contrary notwithstanding, the maximum term of incarceration shall be no greater than thirty (30) days.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO
READ AS FOLLOWS:

(1) A person is guilty of manufacturing naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, or 4-

methylnmethcathinone when he or she knowingly and unlawfully manufactures naphthylprovalerone, 3,4-methylenedioxypropylvalerone, 3,4-methylenedioxypropylmethcathinone, or 4-methylnmethcathinone.

(2) Unlawfully manufacturing naphthylprovalerone, 3,4-methylenedioxypropylvalerone, 3,4-methylenedioxypropylmethcathinone, or 4-methylnmethcathinone is a Class A misdemeanor.

→ Section 4. KRS 218A.050 is amended to read as follows:

Unless otherwise rescheduled by regulation of the Cabinet for Health and Family Services, the controlled substances listed in this section are included in Schedule I:

(1) Any material, compound, mixture, or preparation which contains any quantity of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, or salts is possible within the specific chemical designation:

Acetylmethadol; Allylprodine; Alphacetylmethadol; Alphameprodine; Alphamethadol; Benzethidine; Betacetylmethadol; Betameprodine; Betamethadol; Betaprodine; Clonitazene; Dextromoramide; Dextrophan; Diampromide; Diethylthiambutene; Dimenoxadol; Dimepheptanol; Dimethylthiambutene; Dioxaphetyl butyrate; Dipipanone; Ethylmethylthiambutene; Etonitazene; Etixeridine; Furethidine; Hydroxypethidine; Ketobemidone; Levomoramide; Levophenacetylmorphan; Morpheridine; Noracetylmethadol; Norlevorphanol; Normethadone; Norpipanone; Phenadoxone; Phenampromide; Phenomorphan; Phenoperidine; Piritramide; Proheptazine; Properidine; Propiram; Racemoramide; Trimeperidine.

(2) Any material, compound, mixture, or preparation which contains any quantity of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation: Acetorphine;

1 Acetyldihydrocodeine; Benzylmorphine; Codeine methylbromide; Codeine-N-
 2 Oxide; Cyprenorphine; Desomorphine; Dihydromorphine; Etorphine; Heroin;
 3 Hydromorphenol; Methyl-desorphine; Methyl-dihydromorphine; Morphine
 4 methylbromide; Morphine methylsulfonate; Morphine-N-Oxide; Myrophine;
 5 Nicocodeine; Nicomorphine; Normorphine; Pholcodine; Thebacon.

6 (3) Any material, compound, mixture, or preparation which contains any quantity of the
 7 following hallucinogenic substances, their salts, isomers, or salts of isomers, unless
 8 specifically excepted, whenever the existence of these salts, isomers, and salts of
 9 isomers is possible within the specific chemical designation: 3, 4-
 10 methylenedioxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; 3, 4,
 11 5-trimethoxyamphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 4-
 12 methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide;
 13 Marijuana; Mescaline; naphthylprovalerone; 3,4-methylenedioxyprovalerone;
 14 3,4-methylenedioxymethylcathinone; 4-methylmethcathinone; Peyote; N-ethyl-3-
 15 piperidyl benzilate; N-methyl-3-piperidyl benzilate; Psilocybin; Psilocyn;
 16 Tetrahydrocannabinols; Hashish; Phencyclidine, 2 Methylamino-1-phenylpropan-1-
 17 one (including but not limited to Methcathinone, Cat, and Ephedrone); synthetic
 18 cannabinoid agonists or piperazines; salvia.

19 (4) Any material, compound, mixture, or preparation which contains any quantity of the
 20 following substance having a depressant effect on the central nervous system,
 21 including its salts, isomers, and salts of isomers, unless specifically excepted,
 22 whenever the existence of these salts, isomers, or salts of isomers is possible within
 23 the specific chemical designation: gamma hydroxybutyric acid.

24 ➔Section 5. KRS 217.065 is amended to read as follows:

25 Except for violations of KRS 218A.350, a drug or device shall be deemed to be
 26 misbranded:

27 (1) If its labeling is false or misleading in any particular;

- 1 (2) If in package form unless it bears a label containing:
- 2 (a) The name and place of business of the manufacturer, packer, or distributor,
- 3 except that, in the case of a prescription drug, it shall bear the name and place
- 4 of business of the manufacturer, and the name and place of business of the
- 5 packer, or distributor, if other than the manufacturer; and
- 6 (b) An accurate statement of the quantity of the contents in terms of weight,
- 7 measure, or numerical count; provided that reasonable variations shall be
- 8 permitted, and exemptions as to small packages shall be established, by
- 9 regulations prescribed by the secretary;
- 10 (3) If any word, statement, or other information required by or under authority of KRS
- 11 217.005 to 217.215 to appear on the label or labeling is not prominently placed
- 12 thereon with such conspicuousness (as compared with other words, statements,
- 13 designs or devices, in the labeling) and in such terms as to render it likely to be read
- 14 and understood by the ordinary individual under customary conditions of purchase
- 15 and use;
- 16 (4) If it is for use by man and contains any quantity of the narcotic or hypnotic
- 17 substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal,
- 18 chloral, coca, cocaine, codeine, heroin, marijuana, naphthylprovalerone, 3,4-
- 19 methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-
- 20 methylethylmethcathinone, synthetic cannabinoid agonists or piperazines, salvia,
- 21 morphine, opium, paraldehyde, peyote, or sulfonmethane, or any chemical
- 22 derivative of such substance, which derivative has been by the secretary after
- 23 investigation, found to be, and by regulations under KRS 217.005 to 217.215
- 24 designated as, habit forming; unless its label bears the name and quantity or
- 25 proportion of such substance or derivative and in juxtaposition therewith the
- 26 statement "Warning -- May be habit-forming";
- 27 (5) If it is a drug and is not designated solely by a name recognized in an official

1 compendium unless its label bears:

2 (a) The common or usual name of the drug, if such there be; and

3 (b) In case it is fabricated from two (2) or more ingredients, the common or usual
4 name of each active ingredient, including the kind and quantity or proportion
5 of any alcohol, and also including whether active or not the name and quantity
6 or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin,
7 amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis,
8 digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or
9 any derivative or preparation of any such substances, contained therein;
10 provided that to the extent that compliance with this subsection is
11 impracticable, exemptions shall be established by regulations promulgated by
12 the secretary;

13 (6) Unless its labeling bears:

14 (a) Adequate directions for use; and

15 (b) Such adequate warnings against use in those pathological conditions or by
16 children where its use may be dangerous to health, or against unsafe dosage or
17 methods or duration of administration or application, in such manner and
18 form, as are necessary for the protection of users; provided that where any
19 requirement of subsection (a) of this subsection, as applied to any drug or
20 device, is not necessary for the protection of the public health, the secretary
21 shall promulgate regulations exempting such drug or device from such
22 requirements;

23 (7) If it purports to be a drug the name of which is recognized in an official
24 compendium, unless it is packaged and labeled as prescribed therein; provided that
25 the method of packing may be modified with a consent of the cabinet. Whenever a
26 drug is recognized in both the United States Pharmacopoeia and the Homeopathic
27 Pharmacopoeia of the United States, it shall be subject to the requirements of the

1 United States Pharmacopoeia with respect to packaging and labeling unless it is
 2 labeled and offered for sale as a homeopathic drug, in which case it shall be subject
 3 to the provisions of the Homeopathic Pharmacopoeia of the United States, and not
 4 to those of the United States Pharmacopoeia;

5 (8) If it has been found by the cabinet to be a drug liable to deterioration, unless it is
 6 packaged in such form and manner, and its label bears a statement of such
 7 precautions, as the secretary shall by administrative regulations require as necessary
 8 for the protection of public health. No such administrative regulation shall be
 9 established for any drug recognized in an official compendium until the secretary
 10 shall have informed the appropriate body charged with the revision of such
 11 compendium of the need for such packaging or labeling requirements and such body
 12 shall have failed within a reasonable time to prescribe such requirements;

13 (9) (a) If it is a drug and its container is so made, formed, or filled as to be
 14 misleading; or

15 (b) If it is an imitation of another drug; or

16 (c) If it is offered for sale under the name of another drug;

17 (10) If it is dangerous to health when used in the dosage, or with the frequency or
 18 duration prescribed, recommended, or suggested in the labeling thereof;

19 (11) If:

20 (a) It is a drug intended for use by man which is a habit forming drug to which
 21 subsection (4) of this section applies; or because of its toxicity or other
 22 potentiality for harmful effect, or the method of its use, or the collateral
 23 measures necessary to its use is not safe for use except under the supervision
 24 of a practitioner, and is not dispensed upon a prescription unless prior to
 25 dispensing its label bears the statement "Caution: Federal law prohibits
 26 dispensing without prescription"; or

27 (b) It is a drug or device and its label (as originally packed) directs that it is to be

dispensed or sold only on prescription, unless it is dispensed or sold on a prescription of an authorized practitioner and its label (as dispensed) bears the name and place of business of the dispenser or seller, the serial number and date of such prescription, and the name of such licensed practitioner. Such prescriptions shall not be refilled except on the specific authorization of the prescribing practitioner; provided that where any requirement of this subsection, as applied to any drug or device, is not necessary for the protection of the public health, the secretary shall promulgate regulations exempting such drug or device from such requirement;

(12) A drug sold on a prescription of a practitioner (except a drug sold in the course of the conduct of a business of selling drugs pursuant to diagnosis by mail) shall be exempt from the requirements of this section if:

(a) Such practitioner is licensed by law to administer such drug; and

(b) Such drug bears a label containing the name and place of business of the seller, the serial number and date of such prescription, and the name of such practitioner.

(13) It is not the intention of subsection (2)(a) of this section as amended herein to require the name and place of business of the wholesaler to appear upon the label of the package unless otherwise required by this section.

➔Section 6. KRS 218A.1401 is amended to read as follows:

(1) A person is guilty of selling controlled substances to a minor when he or she, being eighteen (18) years of age or older, knowingly and unlawfully sells or transfers any quantity of a controlled substance other than naphthylprovalerone, 3,4-methylenedioxyprovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone, synthetic cannabinoid agonists, ~~or~~ piperazines, or salvia to any person under eighteen (18) years of age.

(2) Selling controlled substances to a minor is a Class C felony for a first offense, and a

Class B felony for each subsequent offense, unless a more severe penalty for trafficking in controlled substances is applicable, in which case the higher penalty shall apply.

→Section 7. KRS 218A.141 is amended to read as follows:

Any person convicted of, pleading guilty to, or entering an Alford plea to any offense involving trafficking in a controlled substance, other than trafficking in naphthylprovalerone, 3,4-methylenedioxyprovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone, synthetic cannabinoid agonists,~~[or]~~ piperazines,~~[or]~~ salvia, or trafficking in marijuana shall, in addition to any other penalty authorized by law, be sentenced to:

- (1) Pay the costs of disposal of the controlled substances;
- (2) Pay the costs of disposal of all equipment, chemicals, materials, or other items used in or in furtherance of the trafficking offense;
- (3) Pay the costs involved with environmental clean-up and remediation required for the real property and personal property used for or in furtherance of the trafficking offenses; and
- (4) Pay the costs of protecting the public from dangers from chemicals, materials, and other items used for or in furtherance of the trafficking offense from the time of the arrest until the time that the clean-up or remediation of the real and personal property is concluded. The Commonwealth shall have a lien on all of the assets of the defendant until the amount specified by the court under this subsection is paid in full. The Commonwealth's attorney shall file the lien.

→Section 8. KRS 218A.1411 is amended to read as follows:

- (1) Any person who unlawfully traffics in a controlled substance classified in Schedules I, II, III, IV or V, or a controlled substance analogue in any building used primarily for classroom instruction in a school or on any premises located within one thousand (1,000) feet~~[yards]~~ of any school building used primarily for classroom

instruction shall be guilty of a Class D felony, unless a more severe penalty is set forth in this chapter, in which case the higher penalty shall apply. The measurement shall be taken in a straight line from the nearest wall of the school to the place of violation.

- (2) The provisions of subsection (1) of this section shall not apply to any misdemeanor offense relating to naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone, synthetic cannabinoid agonists, ~~or~~ piperazines, or salvia.

→ Section 9. KRS 218A.1413 is amended to read as follows:

- (1) A person is guilty of trafficking in a controlled substance in the second degree when:

(a) He or she knowingly and unlawfully traffics in a controlled substance classified in Schedules I and II which is not a narcotic drug; or specified in KRS 218A.1412; or a controlled substance classified in Schedule III; but not lysergic acid diethylamide, naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone, phencyclidine, synthetic cannabinoid agonists or piperazines, salvia, or marijuana; or

(b) He or she knowingly and unlawfully prescribes, orders, distributes, supplies, or sells an anabolic steroid for:

1. Enhancing performance in an exercise, sport, or game; or
2. Hormonal manipulation intended to increase muscle mass, strength, or weight in the human species without a medical necessity.

- (2) Any person who violates the provisions of subsection (1) of this section shall:

(a) For the first offense be guilty of a Class D felony.

(b) For a second or subsequent offense be guilty of a Class C felony.

→ Section 10. KRS 218A.1416 is amended to read as follows:

1 (1) A person is guilty of possession of a controlled substance in the second degree
 2 when he or she knowingly and unlawfully possesses: a controlled substance
 3 classified in Schedules I or II which is not a narcotic drug; or specified in KRS
 4 218A.1415; or, a controlled substance classified in Schedule III; but not lysergic
 5 acid diethylamide, naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-
 6 methylenedioxymethylcathinone, 4-methylmethcathinone, phencyclidine,
 7 synthetic cannabinoid agonists, ~~or~~ piperazines, salvia, or marijuana.

8 (2) Possession of a controlled substance in the second degree is:

9 (a) For a first offense a Class A misdemeanor.

10 (b) For a second or subsequent offense a Class D felony.

11 ➔Section 11. KRS 218A.276 is amended to read as follows:

12 (1) Any person found guilty of possession of marijuana pursuant to KRS 218A.1422,
 13 naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-
 14 methylenedioxymethylcathinone, or 4-methylmethcathinone pursuant to Section
 15 2 of this Act, ~~or possession of~~ synthetic cannabinoid agonists or piperazines
 16 pursuant to KRS 218A.1427, or salvia pursuant to KRS 218A.1451 may be ordered
 17 to a facility designated by the secretary of the Cabinet for Health and Family
 18 Services where a program of education, treatment, and rehabilitation not to exceed
 19 ninety (90) days in duration may be prescribed. The person ordered to the
 20 designated facility shall present himself or herself for registration and initiation of a
 21 treatment program within five (5) days of the date of sentencing. If without good
 22 cause, the person fails to appear at the designated facility within the specified time,
 23 or if any time during the program of treatment prescribed, the authorized clinical
 24 director of the facility finds that the person is unwilling to participate in his or her
 25 treatment and rehabilitation, the director shall notify the sentencing court. Upon
 26 receipt of notification, the court shall cause the person to be brought before it and
 27 may continue the order of treatment and rehabilitation, or may order confinement in

1 the county jail for not more than ninety (90) days or a fine of not more than two
2 hundred fifty dollars (\$250), or both. Upon discharge of the person from the facility
3 by the secretary of the Cabinet for Health and Family Services, or his or her
4 designee, prior to the expiration of the ninety (90) day period or upon satisfactory
5 completion of ninety (90) days of treatment, the person shall be deemed finally
6 discharged from sentence. The secretary, or his or her designee, shall notify the
7 sentencing court of the date of such discharge from the facility.

8 (2) The secretary of the Cabinet for Health and Family Services, or his or her designee,
9 shall inform each court of the identity and location of the facility to which a person
10 sentenced by that court under this chapter shall be initially ordered.

11 (3) In the case of a person ordered to a facility for treatment and rehabilitation pursuant
12 to this chapter, transportation to the facility shall be provided by order of the court
13 when the court finds the person unable to convey himself or herself to the facility
14 within five (5) days of sentencing by reason of physical infirmity or financial
15 incapability.

16 (4) The sentencing court shall immediately notify the designated facility of the sentence
17 and its effective date.

18 (5) The secretary of the Cabinet for Health and Family Services, or his or her designee,
19 may authorize transfer of the person from the initially designated facility to another
20 facility for therapeutic purposes. The sentencing court shall be notified of
21 termination of treatment by the terminating facility.

22 (6) Responsibility for payment for treatment services rendered to persons pursuant to
23 this section shall be as under the statutes pertaining to payment by patients and
24 others for services rendered by the Cabinet for Health and Family Services, unless
25 the person and the facility shall arrange otherwise.

26 (7) None of the provisions of this chapter shall be deemed to preclude the court from
27 exercising its usual discretion with regard to ordering probation or conditional

1 discharge.

- 2 (8) In the case of any person who has been convicted of possession of marijuana,
 3 naphthylprovalerone, 3,4-methylenedioxypyrovalerone, 3,4-
 4 methylenedioxymethylcathinone, 4-methylmethcathinone,~~[or possession of]~~
 5 synthetic cannabinoid agonists,~~[or]~~ piperazines, or salvia, the court may set aside
 6 and void the conviction upon satisfactory completion of treatment, probation, or
 7 other sentence, and issue to the person a certificate to that effect. A conviction
 8 voided under this subsection shall not be deemed a first offense for purposes of this
 9 chapter or deemed a conviction for purposes of disqualifications or disabilities
 10 imposed by law upon conviction of a crime.

11 ➔Section 12. KRS 218A.410 is amended to read as follows:

- 12 (1) The following are subject to forfeiture:

- 13 (a) Controlled substances listed in Schedule I that are possessed, transferred, sold,
 14 or offered for sale in violation of this chapter are contraband and shall be
 15 seized and summarily forfeited to the state;
- 16 (b) Controlled substances listed in Schedule I, which are seized or come into the
 17 possession of the state, the owners of which are unknown, are contraband and
 18 shall be summarily forfeited to the state;
- 19 (c) Species of plants from which controlled substances in Schedules I and II may
 20 be derived which have been planted or cultivated in violation of this chapter,
 21 or of which the owners or cultivators are unknown, or which are wild growths,
 22 may be seized and summarily destroyed or forfeited to the state. The failure,
 23 upon demand by the law enforcement agency or its authorized agent, of the
 24 person in occupancy or in control of land or premises upon which the species
 25 of plants are growing or being stored, to produce an appropriate registration,
 26 or proof that he or she is the holder thereof, constitutes authority for the
 27 seizure and forfeiture of the plants;

- 1 (d) All substances, machinery, or devices used for the manufacture, packaging,
2 repackaging, or marking, and books, papers, and records, and all vehicles
3 owned and used by the seller or distributor for the manufacture, distribution,
4 sale, or transfer of substances in violation of KRS 218A.350 shall be seized
5 and forfeited to the state. Substances manufactured, held, or distributed in
6 violation of KRS 218A.350 shall be deemed contraband;
- 7 (e) All controlled substances which have been manufactured, distributed,
8 dispensed, possessed, being held, or acquired in violation of this chapter;
- 9 (f) All raw materials, products, and equipment of any kind which are used, or
10 intended for use, in manufacturing, compounding, processing, delivering,
11 importing, or exporting any controlled substance in violation of this chapter;
- 12 (g) All property which is used, or intended for use, as a container for property
13 described in paragraph (e) or (f) of this subsection;
- 14 (h) All conveyances, including aircraft, vehicles, or vessels, which are used, or
15 intended for use, to transport, or in any manner to facilitate the transportation,
16 for the purpose of sale or receipt of property described in paragraph (e) or (f)
17 of this subsection, but:
 - 18 1. No conveyance used by any person as a common carrier in the
19 transaction of business as a common carrier is subject to forfeiture under
20 this section unless it is proven beyond a reasonable doubt that the owner
21 or other person in charge of the conveyance is a consenting party or
22 privy to a violation of this chapter;
 - 23 2. No conveyance is subject to forfeiture under this section by reason of
24 any act or omission established by the owner thereof to have been
25 committed or omitted without his or her knowledge or consent;
 - 26 3. A forfeiture of a conveyance encumbered by a bona fide security interest
27 is subject to the interest of the secured party if he or she neither had

1 knowledge of nor consented to the act or omission; and

2 4. The forfeiture provisions of this paragraph shall not apply to any
 3 misdemeanor offense relating to marijuana, naphthylprovalerone, 3,4-
 4 methylenedioxyprovalerone, 3,4-methylenedioxymethylcathinone, 4-
 5 methylethcathinone,~~[—or]~~ synthetic cannabinoid agonists,~~[—or]~~
 6 piperazines, or salvia;

7 (i) All books, records, and research products and materials, including formulas,
 8 microfilm, tapes, and data which are used, or intended for use, in violation of
 9 this chapter;

10 (j) Everything of value furnished, or intended to be furnished, in exchange for a
 11 controlled substance in violation of this chapter, all proceeds, including real
 12 and personal property, traceable to the exchange, and all moneys, negotiable
 13 instruments, and securities used, or intended to be used, to facilitate any
 14 violation of this chapter; except that no property shall be forfeited under this
 15 paragraph, to the extent of the interest of an owner, by reason of any act or
 16 omission established by him or her to have been committed or omitted
 17 without his or her knowledge or consent. It shall be a rebuttable presumption
 18 that all moneys, coin, and currency found in close proximity to controlled
 19 substances, to drug manufacturing or distributing paraphernalia, or to records
 20 of the importation, manufacture, or distribution of controlled substances, are
 21 presumed to be forfeitable under this paragraph. The burden of proof shall be
 22 upon claimants of personal property to rebut this presumption by clear and
 23 convincing evidence. The burden of proof shall be upon the law enforcement
 24 agency to prove by clear and convincing evidence that real property is
 25 forfeitable under this paragraph; and

26 (k) All real property, including any right, title, and interest in the whole of any lot
 27 or tract of land and any appurtenances or improvements, which is used or

intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this chapter excluding any misdemeanor offense relating to marijuana, naphthylprovalerone, 3,4-methylenedioxyprovalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone, [or] synthetic cannabinoid agonists, [or] piperazines, or salvia, except that property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by the Commonwealth to have been committed or omitted with the knowledge or consent of the owner.

(2) Title to all property, including all interests in the property, forfeit under this section vests in the Commonwealth on the commission of the act or omission giving rise to forfeiture under this section together with the proceeds of the property after the time. Any property or proceeds subsequently transferred to any person shall be subject to forfeiture and thereafter shall be ordered forfeited, unless the transferee establishes in the forfeiture proceeding that he or she is a subsequent bona fide purchaser for value without actual or constructive notice of the act or omission giving rise to the forfeiture.

(3) If any of the property described in this section cannot be located; has been transferred to, sold to, or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value by any act or omission of the defendant; or, has been commingled with any property which cannot be divided without difficulty, the court shall order the forfeiture of any other property of the defendant up to the value of any property subject to forfeiture under this section.

➔ Section 13. KRS 218A.992 is amended to read as follows:

(1) Other provisions of law notwithstanding, any person who is convicted of any violation of this chapter who, at the time of the commission of the offense and in

furtherance of the offense, was in possession of a firearm, shall:

(a) Be penalized one (1) class more severely than provided in the penalty provision pertaining to that offense if it is a felony; or

(b) Be penalized as a Class D felon if the offense would otherwise be a misdemeanor.

(2) The provisions of this section shall not apply to a violation of KRS 218A.210, 218A.1426, 218A.1427, 218A.1428, 218A.1450, 218A.1451,~~[-or]~~ 218A.1452, Section 1, 2, or 3 of this Act.

→Section 14. KRS 530.064 is amended to read as follows:

(1) A person is guilty of unlawful transaction with a minor in the first degree when he or she knowingly induces, assists, or causes a minor to engage in:

(a) Illegal sexual activity; or

(b) Illegal controlled substances activity other than activity involving marijuana, naphthylprovalerone, 3,4-methylenedioxypropylvalerone, 3,4-methylenedioxymethylcathinone, 4-methylmethcathinone, synthetic cannabinoid agonists or piperazines, or salvia as defined in KRS 218A.010;

Except those offenses involving minors in KRS Chapter 531 and in KRS 529.100 where that offense involves commercial sexual activity.

(2) Unlawful transaction with a minor in the first degree is a:

(a) Class C felony if the minor so used is less than eighteen (18) years old at the time the minor engages in the prohibited activity;

(b) Class B felony if the minor so used is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and

(c) Class A felony if the minor so used incurs physical injury thereby.

→Section 15. KRS 218A.010 is amended to read as follows:

As used in this chapter:

(1) "Administer" means the direct application of a controlled substance, whether by

1 injection, inhalation, ingestion, or any other means, to the body of a patient or
2 research subject by:

3 (a) A practitioner or by his authorized agent under his immediate supervision and
4 pursuant to his order; or

5 (b) The patient or research subject at the direction and in the presence of the
6 practitioner;

7 (2) "Anabolic steroid" means any drug or hormonal substance chemically and
8 pharmacologically related to testosterone that promotes muscle growth and includes
9 those substances listed in KRS 218A.090(5) but does not include estrogens,
10 progestins, and anticosteroids;

11 (3) "Cabinet" means the Cabinet for Health and Family Services;

12 (4) "Child" means any person under the age of majority as specified in KRS 2.015;

13 (5) "Controlled substance" means methamphetamine, or a drug, substance, or
14 immediate precursor in Schedules I through V and includes a controlled substance
15 analogue;

16 (6) (a) "Controlled substance analogue," except as provided in subparagraph (b) of
17 this subsection, means a substance:

18 1. The chemical structure of which is substantially similar to the structure
19 of a controlled substance in Schedule I or II; and

20 2. Which has a stimulant, depressant, or hallucinogenic effect on the
21 central nervous system that is substantially similar to or greater than the
22 stimulant, depressant, or hallucinogenic effect on the central nervous
23 system of a controlled substance in Schedule I or II; or

24 3. With respect to a particular person, which such person represents or
25 intends to have a stimulant, depressant, or hallucinogenic effect on the
26 central nervous system that is substantially similar to or greater than the
27 stimulant, depressant, or hallucinogenic effect on the central nervous

1 system of a controlled substance in Schedule I or II.

2 (b) Such term does not include:

- 3 1. Any substance for which there is an approved new drug application;
- 4 2. With respect to a particular person, any substance if an exemption is in
5 effect for investigational use for that person pursuant to federal law to
6 the extent conduct with respect to such substance is pursuant to such
7 exemption; or
- 8 3. Any substance to the extent not intended for human consumption before
9 the exemption described in subparagraph 2. of this paragraph takes
10 effect with respect to that substance;

11 (7) "Counterfeit substance" means a controlled substance which, or the container or
12 labeling of which, without authorization, bears the trademark, trade name, or other
13 identifying mark, imprint, number, or device, or any likeness thereof, of a
14 manufacturer, distributor, or dispenser other than the person who in fact
15 manufactured, distributed, or dispensed the substance;

16 (8) "Dispense" means to deliver a controlled substance to an ultimate user or research
17 subject by or pursuant to the lawful order of a practitioner, including the packaging,
18 labeling, or compounding necessary to prepare the substance for that delivery;

19 (9) "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or V
20 controlled substance to or for the use of an ultimate user;

21 (10) "Distribute" means to deliver other than by administering or dispensing a controlled
22 substance;

23 (11) "Drug" means:

24 (a) Substances recognized as drugs in the official United States Pharmacopoeia,
25 official Homeopathic Pharmacopoeia of the United States, or official National
26 Formulary, or any supplement to any of them;

27 (b) Substances intended for use in the diagnosis, care, mitigation, treatment, or

1 prevention of disease in man or animals;

2 (c) Substances (other than food) intended to affect the structure or any function of
3 the body of man or animals; and

4 (d) Substances intended for use as a component of any article specified in this
5 subsection.

6 It does not include devices or their components, parts, or accessories;

7 (12) "Good faith prior examination," as used in KRS Chapter 218A and for criminal
8 prosecution only, means an in-person medical examination of the patient conducted
9 by the prescribing practitioner or other health-care professional routinely relied
10 upon in the ordinary course of his or her practice, at which time the patient is
11 physically examined and a medical history of the patient is obtained. "In-person"
12 includes telehealth examinations. This subsection shall not be applicable to hospice
13 providers licensed pursuant to KRS Chapter 216B;

14 (13) "Hazardous chemical substance" includes any chemical substance used or intended
15 for use in the illegal manufacture of a controlled substance as defined in this section
16 or the illegal manufacture of methamphetamine as defined in KRS 218A.1431,
17 which:

18 (a) Poses an explosion hazard;

19 (b) Poses a fire hazard; or

20 (c) Is poisonous or injurious if handled, swallowed, or inhaled;

21 (14) "Immediate precursor" means a substance which is the principal compound
22 commonly used or produced primarily for use, and which is an immediate chemical
23 intermediary used or likely to be used in the manufacture of a controlled substance
24 or methamphetamine, the control of which is necessary to prevent, curtail, or limit
25 manufacture;

26 (15) "Intent to manufacture" means any evidence which demonstrates a person's
27 conscious objective to manufacture a controlled substance or methamphetamine.

1 Such evidence includes but is not limited to statements and a chemical substance's
2 usage, quantity, manner of storage, or proximity to other chemical substances or
3 equipment used to manufacture a controlled substance or methamphetamine;

4 (16) "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and
5 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical,
6 positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer"
7 means the optical or geometric isomer;

8 (17) "Manufacture," except as provided in KRS 218A.1431, means the production,
9 preparation, propagation, compounding, conversion, or processing of a controlled
10 substance, either directly or indirectly by extraction from substances of natural
11 origin or independently by means of chemical synthesis, or by a combination of
12 extraction and chemical synthesis, and includes any packaging or repackaging of the
13 substance or labeling or relabeling of its container except that this term does not
14 include activities:

15 (a) By a practitioner as an incident to his administering or dispensing of a
16 controlled substance in the course of his professional practice;

17 (b) By a practitioner, or by his authorized agent under his supervision, for the
18 purpose of, or as an incident to, research, teaching, or chemical analysis and
19 not for sale; or

20 (c) By a pharmacist as an incident to his dispensing of a controlled substance in
21 the course of his professional practice;

22 (18) "Marijuana" means all parts of the plant Cannabis sp., whether growing or not; the
23 seeds thereof; the resin extracted from any part of the plant; and every compound,
24 manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin
25 or any compound, mixture, or preparation which contains any quantity of these
26 substances;

27 (19) "Medical history," as used in KRS Chapter 218A and for criminal prosecution only,

1 means an accounting of a patient's medical background, including but not limited to
 2 prior medical conditions, prescriptions, and family background;

3 (20) "Medical order," as used in KRS Chapter 218A and for criminal prosecution only,
 4 means a lawful order of a specifically identified practitioner for a specifically
 5 identified patient for the patient's health-care needs. "Medical order" may or may
 6 not include a prescription drug order;

7 (21) "Medical record," as used in KRS Chapter 218A and for criminal prosecution only,
 8 means a record, other than for financial or billing purposes, relating to a patient,
 9 kept by a practitioner as a result of the practitioner-patient relationship;

10 (22) "Methamphetamine" means any substance that contains any quantity of
 11 methamphetamine, or any of its salts, isomers, or salts of isomers;

12 (23) "Narcotic drug" means any of the following, whether produced directly or indirectly
 13 by extraction from substances of vegetable origin, or independently by means of
 14 chemical synthesis, or by a combination of extraction and chemical synthesis:

15 (a) Opium and opiate, and any salt, compound, derivative, or preparation of
 16 opium or opiate;

17 (b) Any salt, compound, isomer, derivative, or preparation thereof which is
 18 chemically equivalent or identical with any of the substances referred to in
 19 paragraph (a) of this subsection, but not including the isoquinoline alkaloids
 20 of opium;

21 (c) Opium poppy and poppy straw;

22 (d) Coca leaves, except coca leaves and extracts of coca leaves from which
 23 cocaine, ecgonine, and derivatives of ecgonine or their salts have been
 24 removed;

25 (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

26 (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and

27 (g) Any compound, mixture, or preparation which contains any quantity of any of

- 1 the substances referred to in paragraphs (a) to (f) of this subsection;
- 2 (24) "Opiate" means any substance having an addiction-forming or addiction-sustaining
3 liability similar to morphine or being capable of conversion into a drug having
4 addiction-forming or addiction-sustaining liability. It does not include, unless
5 specifically designated as controlled under KRS 218A.030, the dextrorotatory
6 isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does
7 include its racemic and levorotatory forms;
- 8 (25) "Opium poppy" means the plant of the species *papaver somniferum* L., except its
9 seeds;
- 10 (26) "Person" means individual, corporation, government or governmental subdivision
11 or agency, business trust, estate, trust, partnership or association, or any other legal
12 entity;
- 13 (27) "Physical injury" has the same meaning it has in KRS 500.080;
- 14 (28) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;
- 15 (29) "Pharmacist" means a natural person licensed by this state to engage in the practice
16 of the profession of pharmacy;
- 17 (30) "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific
18 investigator, optometrist as authorized in KRS 320.240, advanced practice
19 registered nurse as authorized under KRS 314.011, or other person licensed,
20 registered, or otherwise permitted by state or federal law to acquire, distribute,
21 dispense, conduct research with respect to, or to administer a controlled substance
22 in the course of professional practice or research in this state. "Practitioner" also
23 includes a physician, dentist, podiatrist, veterinarian, or advanced practice registered
24 nurse authorized under KRS 314.011 who is a resident of and actively practicing in
25 a state other than Kentucky and who is licensed and has prescriptive authority for
26 controlled substances under the professional licensing laws of another state, unless
27 the person's Kentucky license has been revoked, suspended, restricted, or probated,

1 in which case the terms of the Kentucky license shall prevail;

2 (31) "Practitioner-patient relationship," as used in KRS Chapter 218A and for criminal
3 prosecution only, means a medical relationship that exists between a patient and a
4 practitioner or the practitioner's designee, after the practitioner or his designee has
5 conducted at least one (1) good faith prior examination;

6 (32) "Prescription" means a written, electronic, or oral order for a drug or medicine, or
7 combination or mixture of drugs or medicines, or proprietary preparation, signed or
8 given or authorized by a medical, dental, chiropody, veterinarian, optometric
9 practitioner, or advanced practice registered nurse, and intended for use in the
10 diagnosis, cure, mitigation, treatment, or prevention of disease in man or other
11 animals;

12 (33) "Prescription blank," with reference to a controlled substance, means a document
13 that meets the requirements of KRS 218A.204 and 217.216;

14 (34) "Production" includes the manufacture, planting, cultivation, growing, or harvesting
15 of a controlled substance;

16 (35) "Salvia" means *Salvia divinorum* or Salvinorin A and includes all parts of the plant
17 presently classified botanically as *Salvia divinorum*, whether growing or not, the
18 seeds thereof, any extract from any part of that plant, and every compound,
19 manufacture, derivative, mixture, or preparation of that plant, its seeds, or its
20 extracts, including salts, isomers, and salts of isomers whenever the existence of
21 such salts, isomers, and salts of isomers is possible within the specific chemical
22 designation of that plant, its seeds, or extracts. The term shall not include any other
23 species in the genus *salvia*;

24 (36) "Second or subsequent offense" means that for the purposes of this chapter an
25 offense is considered as a second or subsequent offense, if, prior to his conviction of
26 the offense, the offender has at any time been convicted under this chapter, or under
27 any statute of the United States, or of any state relating to substances classified as

controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter;

(37) "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution;

(38) "Serious physical injury" has the same meaning it has in KRS 500.080;

(39) "Synthetic cannabinoid agonists or piperazines" means any chemical compound that contains Benzylpiperazine; Trifluoromethylphenylpiperazine; 1,1-Dimethylheptyl-11-hydroxytetrahydrocannabinol; 1-Butyl-3-(1-naphthoyl)indole; 1-Pentyl-3-(1-naphthoyl)indole; dexamabinol; *(1-(2-morpholin-4-ylethyl)indol-3-yl)-naphthalen-1-ylmethanone (JWH-200); 1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250);* or 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol). The term shall not include synthetic cannabinoids that require a prescription, are approved by the United States Food and Drug Administration, and are dispensed in accordance with state and federal law;

(40) "Telehealth" has the same meaning it has in KRS 311.550;

(41) "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and
3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;

(42) "Traffic," except as provided in KRS 218A.1431, means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense,

1 or sell a controlled substance;

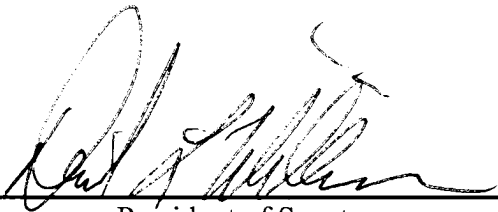
2 (43) "Transfer" means to dispose of a controlled substance to another person without
3 consideration and not in furtherance of commercial distribution; and

4 (44) "Ultimate user" means a person who lawfully possesses a controlled substance for
5 his own use or for the use of a member of his household or for administering to an
6 animal owned by him or by a member of his household.

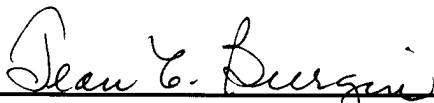
7 ➔Section 16. Whereas, the substances specified in Sections 1 to 15 of this Act are
8 dangerous substances that are currently legal to sell and possess in this state, and whereas
9 it is necessary to prohibit the sale or possession of this substance immediately in an effort
10 to prevent stockpiling of them by individuals for future use, an emergency is declared to
11 exist, and this Act takes effect upon its passage and approval by the Governor or upon its
12 otherwise becoming a law.



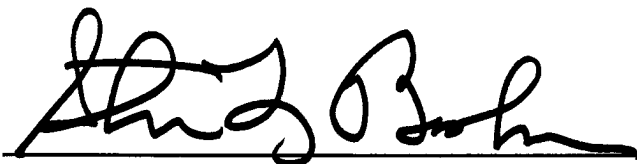
Speaker-House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date 3-16-11